

06-2768

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

APOTEX INC.,
Plaintiff-Appellee,

v.

CEPHALON, INC.,
Defendant-Appellant,

AND

**BARR LABORATORIES, INC., MYLAN
LABORATORIES, INC., TEVA PHARMACEUTICAL
INDUSTRIES, LTD., TEVA PHARMACEUTICALS
USA, INC., RANBAXY LABORATORIES, LTD., AND
RANBAXY PHARMACEUTICALS, INC.,**
Defendants.

2012-1417

Appeal from the United States District Court for the
Eastern District of Pennsylvania in No. 06-CV-2768,
Judge Mitchell S. Goldberg.

Decided: April 8, 2013

APOTEX, INC. v. CEPHALON, INC.

ROBERT B. BREISBLATT, Katten Muchin Rosenman, LLP, of Chicago, Illinois, argued for plaintiff-appellee. With him on the brief were BRIAN J. SODIKOFF, MARTIN S. MASAR, III and CHRISTINE E. BESTOR; HOWARD R. RUBIN and CHRISTOPHER D. JACKSON, of Washington, DC.

WILLIAM F. LEE, Wilmer Cutler Pickering Hale and Dorr, LLP, of Boston, Massachusetts, argued for defendant-appellant. With him on the brief were MARK C. FLEMING, GREGORY P. TERAN, DANIEL M. ESRICK, and ANDREW J. DANFORD; WILLIAM G. MCELWAIN, and CAROLYN JACOBS CHACHKIN, of Washington, DC; ROBERT J. GUNTHER, JR. and OMAR KHAN, of New York, New York.

Before RADER, *Chief Judge*, LOURIE, and O'MALLEY,
Circuit Judges.

PER CURIAM.

We affirm the trial court's judgments of invalidity and unenforceability with respect to Cephalon, Inc.'s ("Cephalon") U.S. Reissue Patent No. 37,516. We do so with the understanding that the court's inequitable conduct finding was based on the conduct of Dr. Peter Grebow and Mr. Richard Burgoon, while acting within the course and scope of their employment or as officers and/or employees of Cephalon. No pleading asserted that Mr. Paul T. Clark committed inequitable conduct, and we do not read the opinion below as finding that he personally committed inequitable conduct.

AFFIRMED

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

NOTICE OF ENTRY OF JUDGMENT ACCOMPANIED BY OPINION

OPINION FILED AND JUDGMENT ENTERED: 04/08/2013

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing en banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

Costs are taxed against the appellant in favor of the appellee under Rule 39. The party entitled to costs is provided a bill of costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs are payable to the party awarded costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Where costs are awarded against the government, payment should be made to the person(s) designated under the governing statutes, the court's orders, and the parties' written settlement agreements. In cases between private parties, payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se. Payment of costs should not be sent to the court. Costs should be paid promptly.

If the court also imposed monetary sanctions, they are payable to the opposing party unless the court's opinion provides otherwise. Sanctions should be paid in the same way as costs.

Regarding exhibits and visual aids: Your attention is directed Fed. R. App. P. 34(g) which states that the clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. (The clerk deems a reasonable time to be 15 days from the date the final mandate is issued.)

FOR THE COURT

/s/ Jan Horbaly

Jan Horbaly
Clerk

Christine Bestor
Robert Breisblatt
Carolyn Jacobs Chachkin
Andrew J. Danford
Daniel M. Esrick
Mark Christopher Fleming
Robert J. Gunther
Christopher D. Jackson
Omar Khan
William F. Lee
Martin S. Masar III
William G. McElwain

Brian J. Sodikoff

Gregory P. Teran

12-1417 - Apotex, Inc. v. Cephalon, Inc.

United States District Court for the Eastern District of Pennsylvania (Philadelphia), Case No. 06-CV-2768